

REMARKS

I. General

The following items were raised in the present Office Action:

- Claims 1, 3, 4, 6-9 stand rejected under 35 U.S.C. § 102(b) as being anticipated by The Hop Picking Year article (hereinafter *Hop*).
- Claims 2, 5 and 10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hop in view of French Application FR2797559A1 to Gaudru (hereinafter *Gaudru*).

Applicants traverse the rejections and request reconsideration in light of the following remarks. Claims 1-10 are pending in this application.

II. § 102 Rejection

Claims 1, 3, 4, 6-9 have been rejected under 35 U.S.C. § 102(b) as being anticipated by *Hop*. Applicants traverse this rejection.

The Examiner has claimed that *Hop* qualifies as prior art; however, the Examiner has not addressed all of Applicants' arguments, and thus has not made a prima facie showing that *Hop* qualifies as a "printed publication." A reference is shown to be a "printed publication" "upon a satisfactory showing that such document has been disseminated or otherwise made available to the extent that persons interested or and ordinarily skilled in the subject matter or art exercising reasonable diligence, can locate it." See M.P.E.P. § 2128 (citing *In re Wyer*, 655 F.2d 221 (CCPA 1981) (quoting *I.C.E. Corp. v. Armco Steel Corp.*, 250 F. Supp. 738, 743 (S.D.N.Y. 1966)). The Examiner states that *Hop* is a 102(b) publication "because the article discussed about the Guinness Time, which is a newspaper dating back to 1958." See Office Action at 5. These are mere allegations and lack any showing of substantive evidence. In other words, the Examiner has not provided Applicants with any corroboration of such statements.

In addition, an Internet search for "Guinness Time" does not reveal the existence of such a publication, and accordingly does not indicate that "persons interested or and

ordinarily skilled in the subject matter or art exercising reasonable diligence, can locate it [the Guinness Time].” Thus, Applicants believe that the Examiner has not made a satisfactory showing that the document qualifies as a printed publication in accordance with M.P.E.P. § 2128.

Further, the Examiner has not shown that a presumption may be raised that the portion of the public concerned with the art would know of the invention in *Hop*. See M.P.E.P. § 2128.01 (citing *In re Bayer*, 568 F.2d 1357 (CCPA 1978)). With respect to an article, such as *Hop*, if it is an article disseminated by mail, then it is not prior art until it is received by at least one member of the public, and thus, the date when the first person received the article is the effective date of publication, not the date it was mailed or sent to the publisher. See M.P.E.P. § 2128.02 (citing *In re Schlittler*, 234 F.2d 882 (CCPA 1956)); see also *Carella v. Starlight Archery*, 804 F.2d 135, 231 USPQ 644 (Fed. Cir. 1986)). Although the date on *Hop* may suggest that it was created in 1958 and the Examiner has claimed that the Guinness Time was a “publicly posted publication,” the Examiner has not made a satisfactory showing that *Hop* was received by anyone nor has the Examiner shown that the portion of the public concerned with the art would know of the invention in *Hop*. Therefore, the Examiner has not demonstrated that *Hop* is a proper 102(b) printed publication, and accordingly, claims 1, 3, 4, and 6-9 should be rendered patentable.

III. § 103 Rejection

Claims 2, 5 and 10 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Hop* in view of *Gaudru*. Applicants hereby traverse these rejections. As discussed with respect to the Examiner’s rejection of claims 1, 3, 4, and 6-9 under 35 U.S.C. § 102(b), the Examiner has not shown that *Hop* is a proper prior art reference. As claim 2 depends directly from base claim 1, claim 5 depends directly from base claim 4, and claim 10 depends directly from base claim 9, these claims also should be rendered patentable for at least the reasons stated with respect to claims 1, 3, 4, and 6-9.

IV. Conclusion

In view of the above remarks, Applicants believe the pending application is in condition for allowance. Applicants believe that no fee is due with this response. However, if there is any amount due, please charge Deposit Account No. 06-2380, under Order No. 48550/P003US/10309896 from which the undersigned is authorized to draw.

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Respectfully submitted,

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